

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1396 of 1995

with

Civil Appln. No.1176 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NEW SWADESHI MILLS

Versus

PURIBEN WD/O PURSHOTTAMDAS

Appearance:

MR KN RAVAL for Petitioners

MR SI NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 20/06/98

ORAL JUDGEMENT

In this Revision , the revisionist has challenged the findings of the Court below on issue No.2A.

Issue No.2A as framed by the Trial Court is reproduced as under :

"Whether the defendant proves that in view of the provisions of Gujarat Closed Textiles Undertaking (Nationalisation) Act, 1986 all the right, titles and interest vests in defendant No.2 since 8.11.85 and no relationship of landlord and tenant now subsists ?"

The above issue was answered by the Trial Court 'in negative' and directed the suit to proceed for the remaining issues. There is categorical finding of the Trial Court that the relationship of landlord and tenant between the plaintiff and the defendant No.2 is not extinguished. It exists of course subject to the provisions of the Act. The learned counsel for the revisionist has however argued that the Trial Court has not considered whether the provisions of Bombay Rent Act, 1947 apply to open land and whether the Rent Court has jurisdiction to entertain suits in respect of open land. It is on this assumption that argument was advanced assailing the findings of the trial court. However, after hearing both the sides and perusing the written statement of the revisionist, I find that no such plea was taken either in the written statement or in the amended written statement that the provisions of the Rent Act, 1947 are not applicable or that the rent court has no jurisdiction to entertain and decide the suit. In the absence of such plea the Trial Court could not have adjudicated upon the question of want of jurisdiction. In doing so, the court below has not committed any jurisdictional error.

So far as the issue No.2A is concerned, it involves mixed question of law and facts. So far as the relationship of landlord and tenant is concerned, it is a pure question of fact on which the revisional court will not interfere. This question was also considered in the light of the provisions of the act and the provisions of the act were not misapplied by the Trial Court. Consequently, the mixed question of relationship of landlord and tenant between the parties has not been incorrectly answered. Consequently, there is no ground of interfering with the findings of the Trial Court on issue No.2A. The revision in these circumstances is devoid of merits and is likely to fail. However, before parting with this judgement, I have considered the request made on behalf of the visionist. The revisionist is permitted to seek appropriate amendment in the written

statement taking the plea of non-applicability of Rent Act and want of jurisdiction of the Trial Court and thereafter, the Trial Court shall decide such plea after framing appropriate issues on the above points.

With the above observation the revision application is dismissed. Interim order is vacated. No order as to costs.

(D.C.SRIVASTAVA, J)

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